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Letter dated 16 October 2012 from the Permanent Representative of the Plurinational State of Bolivia to the United Nations addressed to the President of the General Assembly

I have the honour to enclose the reply of the Plurinational State of Bolivia in response to the statement made by the Republic of Chile on 28 September 2012 (see annex).

In this sense, I would appreciate it if you could distribute the present letter as a document of the General Assembly.

(*Signed*) Sacha **Llorentty Solíz**
Ambassador
Permanent Representative

12-55288 (E) 231012 241012

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Annex to the letter dated 16 October 2012 from the Permanent Representative of the Plurinational State of Bolivia to the United Nations addressed to the President of the General Assembly

[Original: Spanish]

Reply by the Plurinational State of Bolivia to the statement given by the Minister for Foreign Affairs, Ambassador Alfredo Moreno Charme, and to the statement made in exercise of the right of reply by the delegation of the Republic of Chile, on 28 September 2012

As a founding State Member of the United Nations, Bolivia is committed to the principles enshrined in the Charter of the United Nations, which came into force in 1945. The defence of democracy, respect for human rights and the peaceful settlement of disputes, among others, are basic principles that preserve peace, the supreme legal right to which all members of the international community aspire.

The maritime claim of Bolivia is based on strict adherence to international law, and steadfastly and consistently invokes the same.

It should be recalled that the treaties concluded between Chile and Bolivia in 1866 and 1874 were in fact amended; in response, Chile did not argue the "inviolability of treaties", as it does today. However, it is only when reference is made to the Treaty of 20 October 1904, which unfairly sealed Bolivia's geographical isolation, that Chile argues and invokes the "inviolability of treaties".

On 28 September,[1] the Chilean Minister for Foreign Affairs referred to the statement made to the United Nations General Assembly two days earlier by the Constitutional President of Bolivia, Evo Morales.[2] In that regard, Bolivia cannot and will not remain silent in the face of the string of inaccuracies, omissions and falsehoods with which the Chilean Minister attempted to misinform the General Assembly.

The Minister for Foreign Affairs of Chile stated that "Bolivia has no right to claim access to the sea" and that "Chile has fully met its obligations" under the 1904 Treaty. What he fails to say is that in 1879 Chile invaded Bolivia, driven by the interests of an oligarchy, with the involvement of transnational companies, to appropriate the natural resources of the Bolivian people. And that this invasion gave rise to an unfair, imposed and unfulfilled treaty. Unfair because it prevents a country from exercising numerous rights and leaves open a wound in the heart of South America. Imposed because it was signed under coercion. Unfulfilled because Chile breached and continues to breach its obligations to Bolivia.

With regard to the claims by the representative of Chile that the Treaty of 20 October 1904 was signed 20 years after the end of the war, Bolivia wishes to clarify that the said Treaty was imposed after more than 20 years of military occupation of Bolivian territory and total control of its customs, ports and trade, as well as the threat of a return to a state of war and the resumption of military

[1] See A/67/PV.15.

[2] See A/67/PV.11.

hostilities, no account being taken of the fact that in Latin America there was already a clear awareness that force should not be used in international relations.

The Plurinational State of Bolivia attests that the forced signing of the Treaty of 20 October 1904 was merely an attempt to conceal the savage nature of a war of conquest waged by Chile.

At present, the restrictions on free transit and the closure of the Arica-La Paz railway line on the Chilean side for almost a decade (as well as other breaches) offer incontrovertible proof that the Republic of Chile has failed to meet its obligations to the Bolivian State.

The closure of the Arica-La Paz railway line and the privatization of the port of Arica show disregard for the obligations assumed by the Chilean State under the 1904 Treaty and the Convention for the Construction and Operation of a Railroad from Arica to La Paz of 25 June 1905, with which Chile affirms that it is in strict and full compliance. It transferred those obligations into the hands of private entrepreneurs in an attempt to evade its international responsibility, when none of the instruments mentioned establishes in any of its provisions that the Chilean State is entitled to delegate its international obligations. Furthermore, both transfers of responsibility, in addition to having been effected without consultation or agreement with the Bolivian State, put Bolivia in a difficult position by denying its status as a State capable of demanding the fulfilment of certain obligations and placed it in the position of a mere "client" that in a given situation will have to deal, not with the Chilean State, as should be the case, but with the private company "benefiting" from the delegation of the service in question. Consequently, the suspension of the railway service between Arica and La Paz cannot be attributed to the bankruptcy of a private company but rather to the failure of the Chilean State to ensure its operation or, where appropriate, to expedite track repairs, until Bolivia made public its intention to resort to international mechanisms for the peaceful settlement of disputes in relation to its maritime claim.

The Plurinational State of Bolivia rejects the Chilean Government's subjective judgements of what occurred at the League of Nations in 1921 and at the forty-second regular session of the General Assembly of the Organization of American States (OAS). Neither OAS nor the commission of jurists assessed negatively the merits of the Bolivian claim.

Chile states that this is a strictly bilateral issue. The country should be reminded that there are 11 OAS resolutions in force, among which we would like to highlight OAS General Assembly resolution 426 of 31 October 1979, which declares: "That it is of continuing hemispheric interest that an equitable solution be found whereby Bolivia will obtain appropriate sovereign access to the Pacific Ocean" and resolves: "To recommend to the states most directly concerned with this problem that they open negotiations for the purpose of providing Bolivia with a free and sovereign territorial connection with the Pacific Ocean. These negotiations shall take into account the rights and interests of the parties involved, and might consider, among other things, the inclusion of a port area for integrated multinational development, as well as the Bolivian proposal that no territorial compensation be included."

The representative of the Republic of Chile mentioned that, at the most recent session of the OAS General Assembly, no country indicated that this subject should

be addressed within an international organization "or on the basis of resolutions that have been superseded". In that regard, the Chilean Government should be reminded that, in accordance with international law, the 11 resolutions of the OAS General Assembly were unanimously adopted by the more than 30 countries that are members of OAS (including the State of Chile) and that they are therefore fully in force and pending implementation. As proof of this, and in response to the false interpretations made by the representative of Chile, it should be pointed out that the statements made by some countries at the forty-second regular session of the General Assembly of OAS, regarding the need to find a solution through negotiation between the parties, merely highlight that for this regional organization, the solution to Bolivia's landlocked status is a matter of ongoing regional interest that is discussed at each of its sessions, in compliance with the 11 resolutions issued by its General Assembly, urging the Republic of Chile to provide the Plurinational State of Bolivia with a free and sovereign territorial connection with the Pacific Ocean.

It can be inferred from all of the above that the 11 resolutions concerning the landlocked status of Bolivia reflect the *opinio juris* of the Americas and that the members of OAS comply faithfully with them. Chile is the only country that currently seeks to disregard the value of this multilateral body of law, in an attempt to divest OAS of all practical importance and convert it into a purely decorative political body.

In view of the above, Bolivia categorically rejects the statements aimed at establishing that the League of Nations, or any multilateral or judicial body existing then or now, has denied Bolivia's right to free and sovereign access to the Pacific Ocean and its coastline.

The Plurinational State of Bolivia rejects the assertion by the Government of the Republic of Chile that the Constitution of the Plurinational State of Bolivia, adopted in 2009, contains provisions that contravene the international legal framework. In that regard, article 267 of the aforementioned Political Constitution of the Bolivian State affirms that: "I. The Bolivian State declares its inalienable and imprescriptible right over the territory that would give it access to the Pacific Ocean and its maritime space; and furthermore that the effective settlement of the maritime dispute by peaceful means and the full exercise of sovereignty over that territory constitute permanent and inalienable objectives of the State of Bolivia". These are statements that are fully aligned with international law, since they reaffirm our right to sovereign access to the Pacific Ocean, confirming the Bolivian State's commitment to the mechanisms for the pacific settlement of disputes set forth in Article 33 of the Charter of the United Nations.

Bolivia has attempted for decades to resolve this matter by means of dialogue; however, in 2010 Chile unilaterally terminated the approaches made under a 13-point agenda that included the presentation of useful and feasible proposals to resolve this injustice.

It is surprising that Chile seeks to blame Bolivia for the failure of the dialogue, when the facts clearly show the opposite. More than four years passed without any substantial progress in that regard. In July 2010, Chile undertook to present a useful, specific and feasible proposal at the meeting that was to be held in the Chilean region of Arica in November of the same year. Regrettably, that meeting was unilaterally suspended by the Chilean Government. Despite Bolivia's insistence, Chile failed to respond.

Chile now claims to be unaware of Bolivia's right to regain its maritime status, and calls for conditional dialogue, excluding the issue of sovereign access to the sea. The attitude of the Republic of Chile clearly runs counter to the spirit of the 13-point agenda, and shows the ambivalence with which Chile conducts its relations with Bolivia.

The attitude of the Bolivian State, respecting the principles of international peace and security, and complying with the Manila Declaration on the Peaceful Settlement of International Disputes in relation to the Charter of the United Nations, in its exhaustive search for possible scenarios to recover its right to maritime status, is in no way contradictory, since it does not rule out any means guaranteed by the international community for obtaining a fair and peaceful outcome to its maritime dispute with Chile.

The same cannot be said of the distracting foreign policy used by the Chilean State in the maritime dispute, as is clear from the statements by senior Chilean representatives, such as President Piñera, who said that his country respects, and will ensure respect for, the treaties signed, and will defend its territory, its sea and its sovereignty *with all the force in the world*, a statement that does not tally with the words of the Chilean Minister for Foreign Affairs, Mr. Moreno, who referred to "its readiness for brotherly dialogue". This demonstrates once more that the Chilean State is prepared to play an ambivalent game.

Lastly, the statement by the Chilean delegation to the effect that a significant portion of the increase in Bolivia's reserves is attributable to its foreign trade, which is largely carried out using Chilean ports, thanks to the port and free transit facilities that Chile provides under the 1904 Treaty, is a misrepresentation refuted by the Central Bank of Bolivia. The Central Bank has indicated that the foreign trade passing through Chile accounts for a very small proportion of the increase in the country's international reserves. Clearly, Bolivia's international reserves have increased from 1.7 to 13 billion dollars in recent years mostly as a result of gas exports to Argentina and Brazil.

Bolivia's foreign trade is, in fact, being badly hit by the increase in port charges arising from the privatization of the port of Arica, in addition to the non-tariff measures applied by Chile.

Bolivia now has 13 billion dollars in international reserves because it has nationalized and regained sovereignty over its hydrocarbon resources, and because it exports energy, especially via gas pipelines to Brazil and Argentina. Bolivia is today a prosperous country despite, and not thanks to, Chile.